

**PT 99-66**  
**Tax Type: Property Tax**  
**Issue: Educational Ownership/Use**

**STATE OF ILLINOIS**  
**DEPARTMENT OF REVENUE**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**SPRINGFIELD, ILLINOIS**

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<b>CARE-O-SEL CHILD CARE and</b>	)		
<b>EDUCATION, INC.</b>	)		
<b>Applicant</b>	)	<b>A.H. Docket #</b>	<b>98-PT-0057</b>
	)	<b>Docket #</b>	<b>97-84-151</b>
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>34-33.0-451-001</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, Springfield, Illinois on January 26, 1999, to determine whether or not Sangamon County Parcel Index No. 34-33.0-451-001 qualified for exemption during the 1997 assessment year.

Janice Lowder, President and Executive Director of Care-O-Sel Child Care and Education, Inc. (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant. The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1997 assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether this parcel was used by the applicant for charitable purposes during the 1997 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant did not own this parcel during the 1997 assessment year. However, the parcel was held in trust for the use of the applicant in 1997. It is also

determined that the applicant is a charitable organization. Finally, it is determined that the applicant used the parcel for charitable purposes during the 1997 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Sangamon County Parcel Index No. 34-33.0-451-001 did not qualify for a property tax exemption for the 1997 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 13)

2. On March 19, 1998, the Department received a property tax exemption application from the Sangamon County Board of Review for Permanent Parcel Index No. 34-33.0-451-001. The applicant had submitted the request, and the board recommended denial of the exemption for the 1997 year. The Department assigned Docket No. 97-84-151 to the application. (Dept. Grp. Ex. No. 2)

3. On July 30, 1998, the Department denied the requested exemption application, finding that the property was not in exempt ownership and not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing at the Department's offices, 101 West Jefferson, Springfield, Illinois, on January 26, 1999, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant was advised to obtain an attorney prior to the hearing. (Tr. p. 37)

7. A Land Trust agreement was executed between the beneficiaries of Trust No. 89-105, Janice Anne Lowder and Richard Lee Lowder, and the Farmers State Bank of Greenfield on July 7, 1989. (Dept. Grp. Ex. No. 2 pp. 27-28)

8. The Farmers State Bank of Greenfield as trustee under the provisions of a Trust agreement dated July 7, 1989, known as Trust No. 89-105 conveyed to the United Community Bank- Chatham as Successor Trustee of

Trust No. 89 - 105 the subject property on December 30, 1992. (Dept. Ex. No. 2 pp. 3 - 5)

9. The Executive Director of the applicant, Janice Lowder, had arranged with an attorney to have the property transferred to the applicant in October 1996. The applicant was billed for those services but the deed was never recorded. (Applicant's Ex. No. 9; Tr. pp. 25-28)

10. On May 15, 1998, the United Community Bank of Chatham, Sangamon County, Illinois, as Trustee under the provisions of a Trust Agreement dated July 7, 1989, known as Trust No. T-89-105 conveyed the subject property to Care-O-Sel Daycare and Preschool, Inc. (Dept. Ex. No. 2 pp. 11-12)

11. The address of the subject property is North Route 4, Virden, Illinois. Located on the parcel is a one-story 2,400 square foot building. The building is known as the Virden Center for Young Children. That name was chosen to reflect the multipurpose use of the building. (Dept. Grp. Ex. No. 2 p. 1; Applicant's Ex. No. 7; Tr. pp. 24, 32)

12. The applicant was organized under the Illinois General Not-for-Profit Corporation Act. The purpose clause of the applicant, according to amendment to the articles of incorporation, states: " The purpose for which the corporation is organized exclusively for education and care, including such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue code, or the corresponding section of any future tax code." (Dept. Grp. Ex. No. 2 p. 16; Applicant's Ex. No. 2)

13. The Constitution and by-laws of Care-O-Sel Day Care and Preschool state as the purpose of the organization:

In accord with the Articles of Incorporation filed by this organization under the Illinois General Not-For-Profit Act, the purpose of this Corporation shall be to provide child care and educational curriculum to enrich learning experiences of children age six weeks through eleven. It concentrates upon teaching the pre-school child intellectual skills needed for successful entrance into elementary school. Children are admitted regardless of race, creed, sex and religion.

The following are additional purposes for which the Corporation is organized but these are merely illustrative and not intended to limit the statement of purpose, set forth in Article 4 of the Articles of Incorporation:

- (A) To provide parents of all economic and ethnic backgrounds with information and opinion, quality indicators, and costs necessary to make informed child care choices.
- (B) Establish and maintain relationships with local groups interested in child care, including but not limited to, parents, providers, employers, unions, United Ways, local government, school districts and churches and to identify and respond to child care needs within the region.
- (C) To at all times comply with criteria and guidelines established by the Illinois Department of Children and Family Services for child care. (Applicant's Ex. No. 3)

14. The applicant was issued an advanced ruling letter from the Internal Revenue Service on March 20, 1998. The letter stated that the applicant qualifies for an exemption from federal income tax pursuant to the determination that the applicant is a 501(c)(3) organization under the Internal Revenue Code. The advanced ruling period began on October 25, 1996. (Dept. Ex. No. 2 p. 20)

15. The building on the subject parcel is 60 feet by 40 feet. It sits on one acre of land with a fenced yard and a parking lot for 10 cars. The building contains a large room, an office, a kitchen, three bathrooms, and a utility room. The large room is divided into areas by the use of bookshelves. (Applicant's Ex. Nos. 5, 6, & 7; Tr. p. 20)

16. The building houses Care-O-Sel Child Care, a pre-Kindergarten at-Risk program, a Parent Education program, Special Education services, and other community services. No lease or rental fees are charged to the groups that conduct the programs. (Applicant's Ex. No. 7; Tr. p. 32-35)

17. The president and executive director of the applicant is responsible for the coordination of all parent services that the applicant offers. In that capacity, she writes most of the grants to cover the various programs that are offered in the building on the subject property. The property was initially just to be used for day care services but as the applicant realized that

there was an additional need for services for families and parents, supplementary programs were incorporated into applicant's services. (Tr. pp. 33-35, 53-55)

18. The Care-O-Sel Child Care program is operated in the building on the subject premises from 6:00 a.m. to 6:00 p.m. Monday through Friday. State and federally subsidized children make up 45% of the attendance. The program is funded in part by the Illinois Department of Human Services that has a fee schedule based on the gross annual income of a family and the family size. The applicant waives the fees of persons unable to pay for the child-care provided. No person has been denied access to the applicant's services because of an inability to pay the fees. The applicant does attempt to collect subsidy fees from the governmental agencies. (Applicant's Ex. Nos. 8, 10 & 11; Tr. pp. 23-24, 29-32, 53-54)

19. Approximately 22 staff personnel are employed at the center. Forty-five children between the ages of 6 weeks and 5 years are at the center for child care on a daily basis. Thirty-five school aged children are at the center before or after school and during the summer program. Thirty birth to age three children are served by the applicant in their homes. (Tr. pp. 36-37)

20. On Mondays, Tuesdays, Wednesdays, and Thursdays, a play group uses the building from 8:30 until 10:30 a.m. The play group is made up of parents and children ages birth to three. Approximately six mothers and children participate in the program at the building on a daily basis. The program has approximately 30 parents that are visited on a monthly basis to provide an opportunity for socialization for the parent and child. The organization responsible for the funding for the program is Model Parent Training of the I.S.O.B.E. I.S.O.B.E. is the Illinois State Board of Education. The applicant's president and executive director is in charge of the program. (Applicant's Ex. No. 8; Tr. pp. 22, 33, 38-44)

21. Also using the building on a daily basis from 8:10-10:40 a.m. is a Pre-Kindergarten group. The PreK-at-Risk program of the I.S.O.B.E provides the funding for the staff person that conducts the program. The Pre-Kindergarten at Risk Program serves children in all school districts that are deemed to be at risk of school failure. The school failure may begin in kindergarten due to social economic factors such as a blended family, low birth weight, a

single child home, or because the child has only one parent. The staff person of I.S.O.B.E. identifies the at-risk children. The program provides an enriched environment for the children at risk to interact with others. The interaction enables the child's skills and development to be enhanced so that when the child arrives at kindergarten the child is ready to learn. The program is conducted in applicant's building. No rent is paid to the applicant for the At Risk program. (Applicant's Ex. No. 8; Tr. pp. 2223, 38-43,49)

21. On Monday evenings from 6:00 to 10:00 p.m. parent classes are offered in the building on the subject property. The T.E.A.L. program of Lincoln Land Community College is the provider of the funding for the program. Staff persons employed by Lincoln Land Community College conduct the program. The program is for training and education of adult learners. Lincoln Land Community College writes the grant for the program. The applicant does not charge Lincoln Land Community College for the use of the building. (Applicant's Ex. No. 8; Tr. pp. 23, 42-44)

22. On Tuesday evenings a S.T.E.P. class takes place in the building. The funds for that program come from L.A.N.S. L.A.N.S. is the acronym for local area networks. Tri-County Counseling arranges for the staff person to teach the program. The applicant does not charge rent for the use of the building. (Applicant's Ex. No. 8; Tr. pp. 23, 44-45)

23. On a monthly basis, CPR classes are offered in the building on the subject premises. The classes are provided by a local registered nurse that is on the applicant's Board of Directors. The program is offered free of charge to the community. No rent is paid for the use of the building. (Applicant's Ex. No. 8; Tr. p. 23)

24. Prairie Temple Church uses the building for Sunday School Classes on Sunday Mornings from 9:00 a.m. through 12:00 a.m. No rent is paid for the use of the building. (Applicant's Ex. No. 8; Tr. p. 23)

25. For one hour per-week per identified child the building is used for a developmental therapy program funded by Family Connections of D.H.S. D.H.S. stands for the Department of Human Services, a mega-State agency that incorporates the Department of Public

Aid and Department of Children and Family Services. No rent is paid to the applicant for the use of the facility. (Applicant's Ex. No. 8; Tr. pp. 23, 45-46)

26. For four hours per week the building is used for the Child Care for Parent Activities program of M.P.T. and I.S.B.O.E. M.P.T. stands for model parental training. It is affiliated with the Illinois State Board of Education. As part of model parental training activities, the mothers involved in the program are entitled to a "mom's day out." During that time the mothers may go to visit another child's school. The applicant offers child care for the mothers while they are doing those parent type activities. The applicant does not charge day care rates for those children. The model parental training program also offers talk groups for parents as well as Lamaze and exercise classes for pregnant mothers. Again, no rent is charged for the use of the building. (Applicant's Ex. No. 8; Tr. pp. 23, 46-48)

27. The applicant's balance sheet for the period of January-December 1997 shows tuition deposits of \$124,511.94; subsidized child care payments from the Department of Human Services, Department of Public Aid, and Department of Children and Family Services in the amount of \$81,918.98; a fund raiser amount of \$3,973.26; United States Department of Agriculture food program deposits of \$15,687.17; parent education and training funds from the Illinois State Board of Education for children ages 0-3 in the amount of \$9,591.80; and services provided to parents of three, four, and five year old children that are subsidized/funded through the Illinois Board of Education in the amount of \$54,582.12. (Applicant's Ex. No. 4; Tr. pp. 20-21)

28. In 1998, the applicant had approximately \$3,000.00 worth of unpaid child-care fees. Those children continue to be part of applicant's day-care program. (Applicant's Ex. No. 10; Tr. pp. 29-30)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the

State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one whom asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, . . .

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and



" exclusively used" for purposes which qualify as " charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill. 2d 149, 156 (1968) (hereinafter "Methodist Old People's Home"). They have also ascribed to the following definition of "charity[,]" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all who need and apply for it;
- 4) they do not

provide gain or profit in  
a private sense to any  
person connected with  
it,

- 5) they do not  
appear to place  
obstacles of any  
character in the way of  
those who need and would  
avail themselves of the  
charitable benefits it  
dispenses; and
- 6) In addition,  
the use of the property  
must be for charitable  
purposes. Methodist Old  
People's Home at 157.

In the case of People v. Chicago  
Title and Trust Co., 75 Ill. 2d 479  
(1979), the court held that the holder  
of the beneficial interest in a land  
trust was the owner of the property for  
real estate tax purposes. Therefore for  
the purposes of a property tax exemption  
in 1997, the owners of the property were  
Janice Anne Lowder and Richard Lee Lowder. The Lowders did not  
use the property for their personal uses  
but rather held it in trust for the use  
of the applicant. In addition, they  
had attempted to convey the property to  
the applicant, but the conveyance  
had not been recorded. The Illinois Courts have held that  
property will qualify for exemption where it is held in trust for the use and benefit of an exempt  
organization. See People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363  
(1944). Also, see Community Mental Health Council, Inc. v. Department of Revenue, 186

Ill.App.3d 73 (1989).

The applicant has been determined to be exempt from federal Income Tax pursuant to a 501(c)(3) designation of the Internal Revenue Code. I therefore find that the applicant has no capital stock or shareholders. The applicant waives child-care fees of families unable to make payments. Applicant's funding comes from tuitions, state and federal funds, and fund-raisers. I find that the applicant has established that they earn no profits or dividends and their funds come from public and private charity. Those funds are held in trust for the objects and purposes expressed in their articles of incorporation.

The applicant waives fees of those unable to pay. I therefore find that the applicant dispenses charity to all who need and apply for it, and do not provide gain or profit in a private sense to anyone connected with the organization. I also find that they do not appear to place obstacles in the way of those who need and would avail themselves of the charitable benefits. In addition, the applicant does not charge rents to other groups and organizations that use its building. I therefore find that the use of the subject parcel is for charitable purposes.

It is therefore recommended that Sangamon County Parcel Index No. 34-33.0-451-001 be exempted from property taxation for the 1997 assessment year.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
August 13, 1999